

financial goals specified under the Reform Act and, if it finds that Amtrak cannot, to notify the President and the Congress.

The Reform Act prescribes that the Council is to consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and the leadership of the Congress. Members serve a five-year term.

Issued in Washington, DC, July 23, 2001.

Thomas A. Till,

Executive Director.

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DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 010622161-1161-01]

RIN 0607-AA34

Mandatory Automated Export System (AES) Filing for all Items on the Commerce Control List (CCL) and the United States Munitions List (USML)

AGENCY: Bureau of the Census, Commerce.

ACTION: Program notice.

SUMMARY: The Bureau of the Census (Census Bureau) is issuing this special program notice to announce to the export community that the Automated Export System (AES) Certification Report was submitted to Congress. The Certification Report verifies the security and successful implementation of the AES, an electronic system for filing Shipper's Export Declarations (SEDs). In the future, the Census Bureau will issue proposed and final rules in the **Federal Register** providing additional information about the AES requirements and allowing the public to comment.

In addition, this notice announces the requirement for the mandatory Automated Export System (AES) filing for all items on the Commerce Control List (CCL) and the United States Munitions List (USML), whether or not a license is required. This requirement is mandated by Public Law 106-113, Title XII, "Security Assistance," Subtitle E, "Proliferation Prevention Enhancement Act of 1999". This law will require that exporters or their agent's who are required to file SEDs, file such declarations through the AES with respect to exports of items on the CCL and the USML. Section 1252 of this law stipulates that the mandatory filing through the AES of all items on the CCL and the USML will take effect 270 days

after the Secretary of Commerce, the Secretary of the Treasury, and the Director of the National Institute of Standards and Technology (NIST) provide certification to the Senate Committee on Foreign Relations and the House Committee on International Relations that the U.S. Customs Service AES mainframe computer system and the U.S. Census Bureau Internet based AESDirect system are secure and functional systems capable of implementing the provisions of Pub. L. 106-113. In response to this provision, the Secretaries of Commerce and Treasury and the Director of NIST provided such certification and an AES Certification Report to the appropriate committees of Congress in June 2001 initiating the 270-day countdown.

DATES: The effective date for the mandatory filing through the AES of all items on the CCL and the USML will be in March 2002. The exact effective date will be specified in appropriate regulations that will be issued to implement this legislation in the near future.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information on this requirement should be directed to C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, D.C. 20233-6700, (301) 457-2255 or by fax (301) 457-2645.

SUPPLEMENTARY INFORMATION: On November 29, 1999, the President signed H.R. 3194 into law (Public Law 106-113). The short title to this law, as specified in section 1251, is referred to as the "Proliferation Prevention Enhancement Act of 1999." Section 1252 of this law amends Title 13, United States Code, Chapter 9, Section 301, to add Section "(h)" authorizing the Department of Commerce, Census Bureau, to require by regulation mandatory reporting requirements for filing export information through the AES. This Act further specifies that all items on the CCL and the USML that require an SED be reported through the AES, whether or not a license is required. Public Law 106-113 may be found at <http://www.access.gpo.gov/nara>.

The mandatory filing of all items on the CCL and the USML will take effect 270 days after the Department of Commerce, the Department of the Treasury, and the NIST jointly certify to the Senate Committee on Foreign Relations and the House Committee on International Relations that a secure and functional AES mainframe computer system of the U.S. Customs Service (Customs) and the Internet based

AESDirect system of the Census Bureau are capable of implementing the provisions and workload volume mandated by the legislation.

The General Services Administration (GSA), Office of Information Security (OIS), conducted independent security and functionality assessments of the AES and AESDirect systems. Between June and September 2000, GSA/OIS conducted a Level I and Level II security assessment of the AES and AESDirect systems. No major security vulnerabilities were discovered in either system. There were some minor vulnerabilities discovered in both systems, however, the Certification Report presented to Congress addresses how each agency either resolved the vulnerabilities or the actions being taken to resolve each vulnerability. A copy of the AES Certification Report with confidential security sections removed is available on the Census Bureau and Customs web sites.

The AES Certification Report certifies the security and functionality of the Customs AES mainframe and the Census Bureau AESDirect system, and describes the findings and specific recommendations for implementing the provisions of the legislation. In the report, the Secretary of Commerce, the Secretary of the Treasury, and the Director of the NIST certify that: (1) The AES and AESDirect systems are secure and functional automated export reporting systems that meet the security requirements established by the Federal Government; (2) The AES and AESDirect systems are capable of implementing the requirements specified in the legislation for the mandatory filing through the AES of all items on the CCL and the USML; and (3) the AES and AESDirect systems are capable of handling the expected volume from the voluntary use of the AES.

Further, the Chief Information Officers of the Department of Commerce, Department of the Treasury, and NIST evaluated the AES and AESDirect security and functionality attributes and have determined that the AES and AESDirect systems meet the security standards as set forth under the Security Standards of the Office of Management and Budget Circular A-130 and the Presidential Decision Directive 63. In addition, the AES has received a security accreditation from Customs, and the AESDirect system has received a security accreditation from the Census Bureau.

Therefore, the AES Certification Report and the Certification Letters jointly presented to the Congressional Committees by the Secretary of

Commerce, the Secretary of the Treasury, and the Director of NIST certify that a secure and functional AES and AESDirect systems are available and capable of handling the reporting through the AES of all items on the CCL and USML. It is further certified that the AES and AESDirect systems are production operational, have been fully tested, and are fully functional with respect to the reporting of all items on the CCL or the USML.

Other Requirements

Executive Orders

This program notice has been determined to be not significant for purposes of Executive Order (E.O.) 12866. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. This notice does not represent a collection of information and is not subject to the PRA's requirements.

Program Change

The AES Certification Report was submitted to the House Committee on International Relations on May 31, 2001, and to the Senate Committee on Foreign Relations on June 11, 2001. Therefore, the effective date for implementation of mandatory filing through AES for all items on the CCL and the USML is planned for March 2002.

The actual effective date of the AES mandatory filing requirement is dependent upon the publication and implementation of final regulatory amendments by the Census Bureau, the Bureau of Export Administration, and Customs, with the concurrence of the Department of State. Proposed and final rules defining the regulatory revisions that will be made to implement this legislation will be published in the **Federal Register** in the near future. The provision for the mandatory AES filing of all items on the CCL and USML is not negotiable or subject to comment. However, there may be other operational regulatory provisions required to implement the legislation

that will be available for comment by the public.

Dated: July 2, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

[01-BXA-01]

In the Matter of: Jabal Damavand General Trading Company, Dubai, United Arab Emirates, Respondent; Decision and Order

On June 14, 2001, the Administrative Law Judge (hereinafter the "ALJ") issued a Recommended Decision and Order in the above-captioned matter. The Recommended Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. The Recommended Decision and Order sets forth the procedural history of the case, the facts of the case, and the detailed findings of fact and conclusions of law. The findings of fact and conclusions of law concern whether Jabal Damavand General Trading Company (hereinafter "Jabal Damavand") committed three violations of the Export Administration Regulations (hereinafter the "Regulations")¹ and a recommended penalty for those violations.

Based on my review of the record and pursuant to Section 766.22(c) of the Regulations, I am vacating the June 14, 2001 Recommended Decision and Order and referring this case back to the ALJ for further proceedings not inconsistent with this determination.

I. The ALJ's Findings of Fact Are Not Sufficient To Constitute a Violation of Section 764.2(b) or Section 764.2(e) of the Regulations

The facts as found in the Recommended Decision and Order are not sufficient to constitute a violation of either Section 764.2(b) or Section 764.2(e) of the Regulations. The ALJ found that Jabal Damavand violated Section 764.2(b) of the Regulations by causing, aiding, or abetting the reexport of U.S.-origin ferrography lab equipment from the United Arab Emirates to Iran without obtaining from the Commerce Department's Bureau of Export

Administration (hereinafter "BXA") the reexport authorization that it knew or had reason to know was required by Section 742.8(a)(2) and Section 746.7 of the Regulations. In addition and in connection with the violation of Section 764.2(b), the ALJ found that Jabal Damavand violated Section 764.2(e) of the Regulations by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, license, or authorization issued thereunder occurred, was about to occur, or was intended to occur with respect to the reexport.

Licensing requirements imposed under Section 742.8(a)(2) and Section 746.7 of the Regulations for reexports of U.S.-origin items to Iran are determined by the classification of the item at issue within the Commerce Control List (hereinafter "CCL"). The Recommended Decision and Order did not include a finding regarding the classification within the CCL of the ferrography lab equipment reexported to Iran by Jabal Damavand. In order to establish that Jabal Damavand violated the reexport licensing requirements contained in Section 742.8(a)(2) or Section 746.7 of the Regulations, there must be a finding that the ferrography lab equipment is classified within an Export Control Classification Number (hereinafter "ECCN") that is subject to reexport licensing controls imposed by these sections. Without a finding determining the classification of the ferrography lab equipment, I cannot affirm the ALJ's decision and Jabal Damavand violated Section 764.2(b) and Section 764.2(e) of the Regulations by reexporting the equipment to Iran without a license or other authorization required by the Regulations.

The only mention of the classification of the ferrography lab equipment in the record is BXA's assertion in its May 21, 2001 Motion for Default Order to the ALJ that the equipment is classified as EAR99.² If the ferrography lab equipment indeed is classified as EAR99, then neither Section 742.8(a)(2) nor Section 746.7 of the Regulations would require Jabal Damavand to obtain a license or other authorization to reexport the equipment to Iran. Both Section 742.8(a)(2) and Section 746.7 of the Regulations impose reexport licensing requirements based on the classification of an item within certain ECCNs, or based on certain reasons for

¹ The Regulations governing the violations at issue are found in the 1998 version of the Code of Federal Regulations. The Regulations are codified at 15 CFR parts 730-774 (1998) and, to the degree to which they pertain to this matter, are substantially the same as the 2000 version.

² An Item is classified as EAR99 when the item is "subject to" the Regulations (as defined in Section 734.3 of the Regulations), but is not identified within any specific ECCN on the CCL.